IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.743 OF 2007

IN

SUIT NO.1578 OF 1987

N.P.Jajodia .. Plaintiff.

Versus

Heli India Pvt. Ltd. .. Defendants.

And

Vishal Jajodia & Ors. .. Applicant.

Ms.Shilpa Kamble h/f.Shukla & Shukla for the plaintiff.

Mr.A.N.Samant for the defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 3rd JULY, 2007.

P.C.:

1. The suit is filed by Narayan Prasad Jajodia, a sole proprietary concern, more particularly described in the cause title.

2. The sole proprietor Narayan Prasad Jajodia expired on 19th March, 2003. Thereafter, the suit was dismissed as having abated.

3. A Chamber Summons was taken out being Chamber Summons No.506 of 2006 but this Court permitted the same to be withdrawn on 27th April, 2006 with liberty to take out proper proceedings as all heirs of the deceased - sole proprietor were not brought on record.

4. The learned Advocate appearing for the plaintiff in these circumstances invites my attention to the paragraphs 6 and 7 of the affidavit in support and submits that the delay be condoned in the interest of justice.

5. Mr.Samant while not disputing the fact that the suit does not survive, submits that the applicants have not been diligent at all in prosecuting the suit. The sole plaintiff has expired four and half years back and his heirs are sought to be brought on record after delay of more than four years. The delay has not been explained and merely because earlier proceedings have been allowed to be withdrawn does not mean that this Court should entertain the request.

6. After having perused the Chamber Summons and the affidavit in support and considering that the Hon’ble Supreme Court directs applicability of liberal principles while considering such applications, the present Chamber

Summons is allowed. It is made absolute in terms of prayer clause (a) subject to the applicants paying cost quantified at Rs.10,000/- to the defendant. Cost condition precedent. If costs are tendered and proof of payment thereof is produced to the satisfaction of the Original Side Registry, then, the plaintiffs / applicants be permitted to carry out the amendments and such amendments be carried out within a period of two weeks from the date of production of such proof as above. Thereupon, a copy of the amended plaint be served on the defendant within a period of four weeks thereafter. The defendant to file written statement / additional written statement, if any, within a period of six weeks from the date of receipt of the copy of the amended plaint.

7. Chamber Summons is accordingly disposed of.

(S.C.Dharmadhikari, J.)